

SENSITIVE

FEDERAL ELECTION COMMISSION

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FEDERAL ELECTION COMMISSION

999 E Street, N.W.

Washington, D.C. 20463

2017 FEB 27 AM 9:58

FIRST GENERAL COUNSEL'S REPORT CELA

MUR: 7095

COMPLAINT FILED: July 1, 2016

DATE OF NOTIFICATION: July 8, 2016

DATE OF LAST RESPONSE: Aug. 31, 2016

ACTIVATED: Nov. 29, 2016

ELECTION CYCLE: 2016

Earliest SOL: June 1, 2021

Latest SOL: June 17, 2021

COMPLAINANT:

John C. Zody, Chair
Indiana Democratic Party

RESPONDENTS:

RGA Right Direction PAC
Michael Adams, Treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30120(a)
52 U.S.C. § 30120(d)(2)
11 C.F.R. § 110.11(a)(1)
11 C.F.R. § 110.11(c)(4)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint alleges that RGA Right Direction PAC ("RGA PAC") and Michael Adams in his official capacity as treasurer (the "Committee") failed to include a complete disclaimer on two television advertisements that it aired in June 2016 opposing Indiana gubernatorial candidate John Gregg. The Committee acknowledges that the disclaimers for the advertisements failed to state in writing that RGA PAC is responsible for the content of the advertisement, but argues that the disclaimer requirements are inapplicable because the advertisements did not mention a federal candidate.

1 Although federal political committees are required to include complete disclaimers on all
2 public communications, regardless of content, we recommend that the Commission dismiss the
3 allegation that the Committee failed to comply with 52 U.S.C. § 30120(a) and 11 C.F.R.
4 § 110.11, but send a caution letter to the Committee.

5 II. FACTUAL AND LEGAL ANALYSIS

6 A. Facts

7 RGA PAC is an independent expenditure-only political committee registered with the
8 Commission, and Michael Adams is its treasurer.¹ RGA PAC aired two television
9 advertisements, titled "Twins" and "Facts," in Indiana on or about June 6, 2016.² The
10 Committee disclosed to the Commission disbursements totaling \$1,295,472 for the two
11 advertisements.³ The two advertisements, which opposed Gregg, did not mention a federal
12 candidate nor refer to a federal election.⁴

13 Both advertisements contain the following audio disclaimer: "RGA Right Direction PAC
14 is responsible for the content of this advertising."⁵ Neither advertisement includes a complete
15 written disclaimer stating that RGA PAC is responsible for the content of the advertisement
16 ("content responsibility statement"). The "Twins" advertisement contains a written disclaimer

¹ Amended Statement of Organization, RGA PAC (June 8, 2012),
<http://docquery.fec.gov/pdf/939/12971260939/12971260939.pdf>.

² Compl. at 2 (July 1, 2016); <https://www.youtube.com/watch?v=fPRim6SRNrM&feature=youtu.be>;
https://www.youtube.com/watch?v=G0Tp_kM_3xI&feature=youtu.be.

³ Committee Resp. at 2 (Aug. 31, 2016); 2016 July Quarterly Report, RGA PAC (July 14, 2016),
<http://docquery.fec.gov/pdf/809/201607149020457809/201607149020457809.pdf>. The disbursements are described
as "Non-Federal Media Placement" in the report.

⁴ Committee Resp. at 2.

⁵ *Id.* Available information shows that the "Facts" advertisement may also be titled "Factoids."
http://ecmsuite.fec.gov/ecmprd/llisapi.dll/fetch/2000/23676/367992/367912/3788364/3788365/MUR_7095_Contra
[t_873774.pdf?nodeid=4082238&vernum=-2](http://ecmsuite.fec.gov/ecmprd/llisapi.dll/fetch/2000/23676/367992/367912/3788364/3788365/MUR_7095_Contra).

1 stating: "Paid for by RGA Right Direction PAC, 202-662-4162 and not authorized by any
2 federal candidate or candidate's committee," while the "Facts" advertisement contains a similar
3 written disclaimer stating: "Paid for by RGA Right Direction PAC, 202-662-4162 and not
4 authorized by any candidate or candidate's committee."⁶ The Complaint alleges that the
5 advertisements violate the disclaimer requirements by not including a written content
6 responsibility statement.⁷

7 The Committee concedes the missing written content responsibility statement on the two
8 advertisements, but argues that the disclaimer requirements are inapplicable because the
9 advertisements do not refer to a federal candidate.⁸

10 **B. Analysis**

11 The Federal Election Campaign Act of 1971, as amended (the "Act") and the
12 Commission regulations require that all public communications (such as a television
13 advertisement) by a political committee carry disclaimers.⁹ Unlike the disclaimer requirements
14 for public communications by persons other than political committees, the disclaimer
15 requirement for public communications by political committees applies without regard to the
16 content of the communication.

17 If the communication is not authorized by a federal candidate, his authorized committee
18 or its agents, the communication must clearly state the name and permanent street address,
19 telephone number, or World Wide Web address of the committee and state that the

⁶ Compl. at 2.

⁷ *Id.* at 2-3.

⁸ Committee Resp. at 2-3.

⁹ 52 U.S.C. § 30120(a); 11 CFR §§ 110.11(a)(1), 100.26 (defining public communication).

1 communication is not authorized by any candidate or candidate's committee.¹⁰ A television
2 advertisement must also include both audio and clearly readable written statements that the
3 political committee "is responsible for the content of this advertising."¹¹

4 The record shows that the two television advertisements failed to include the written
5 "content responsibility statement."¹² Notwithstanding this deficiency, the Commission has not
6 pursued disclaimer violations in past matters where the disclaimer was incomplete but contained
7 sufficient information to indicate that the sponsor had authorized the communication.¹³ The
8 television advertisements in question provided such identifying information. Thus, we
9 recommend that the Commission dismiss as a matter of prosecutorial discretion the allegation
10 that the Committee violated 52 U.S.C. § 30120(a) and (d)(2) and 11 C.F.R. § 110.11(a)(1) and
11 (c)(4)¹⁴ but send an appropriate cautionary letter regarding the Act's disclaimer requirements.¹⁵

¹⁰ 52 U.S.C. § 30120(a)(3); 11 CFR 110.11(a)(3).

¹¹ 52 U.S.C. § 30120(d)(2); 11 CFR 110.11(c)(4).

¹² The Committee argues that the disclaimer requirements are inapplicable to the two nonfederal advertisements and claims that it "made an anonymous call to the FEC's Information Division on July 14, 2016, at 10:47 am on the question at issue in this matter and was told without hesitation that the Commission's disclaimer requirements do not apply to advertisements by political committees that mention only candidates for state office." Committee Resp. at 1, 2-3. The Committee's counsel does not indicate who he purportedly spoke to in the Information Division, and the Information Division does not maintain records as to such calls.

Even if counsel called the Information Division regarding this question, the Committee's position is untenable. The Act plainly requires appropriate disclaimers on all public communications of a political committee. In adopting its corresponding disclaimer regulations, the Commission recognized that Congress expanded the scope of the disclaimer requirement for political committees, and the Commission concluded that the expansive phrase "any communication" in 52 U.S.C. § 30120(a) shows that the disclaimer requirements apply to "all" of a political committee's enumerated communications. Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, Final Rules, 67 Fed. Reg. 76962, 76964 (Dec. 13, 2002).

¹³ See MUR 6785 (Kwasman for Congress) (dismissing allegation because campaign materials at issue contained partial disclaimer identifying the payor); MUR 6278 (Committee to Elect Joyce B. Segers for Congress) (dismissing allegations that campaign websites and flyers lacked requisite disclaimers where partial payor information in the form of contact information was included).

¹⁴ *Heckler v. Chaney*, 470 U.S. 821 (1985).

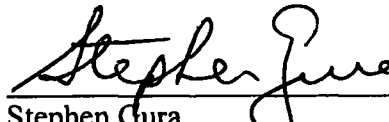
III. RECOMMENDATIONS


1. Dismiss the allegation that RGA Right Direction PAC and Michael Adams in his official capacity as treasurer violated 52 U.S.C. § 30120(a) and (d)(2) and 11 C.F.R. § 110.11(a)(1) and (c)(4) and send a letter of caution.
2. Approve the attached Factual and Legal Analysis.
3. Approve the appropriate letters.
4. Close the file.


Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel
for Enforcement

2.24.17
Date


Stephen Gura
Deputy General Counsel for Enforcement


Mark Shonkwiler
Assistant General Counsel


Kamau Philbert
Attorney

Attachment: Factual and Legal Analysis

¹⁵ See, e.g., MUR 6683 (Fort Bend County Democratic Party) (dismissing violation and sending a caution letter where disclaimer was incomplete but contained some information identifying the payor); MUR 6633 (Republican Majority Campaign PAC) (same), MUR 6438 (Art Robinson for Congress) (same), and MUR 6278 (Committee to Elect Joyce B. Segers for Congress) (reminding committee concerning the use of appropriate disclaimers).

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: RGA Right Direction PAC MUR: 7095
and Michael Adams in his
official capacity as treasurer

I. INTRODUCTION

The Complaint alleges that RGA Right Direction PAC ("RGA PAC") and Michael Adams in his official capacity as treasurer (the "Committee") failed to include a complete disclaimer on two television advertisements that it aired in June 2016 opposing Indiana gubernatorial candidate John Gregg. The Committee acknowledges that the disclaimers for the advertisements failed to state in writing that RGA PAC is responsible for the content of the advertisement, but argues that the disclaimer requirements are inapplicable because the advertisements did not mention a federal candidate.

Although federal political committees are required to include complete disclaimers on all public communications, regardless of content, the Commission dismisses the allegation that the Committee failed to comply with 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11, but send a caution letter to the Committee.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

RGA PAC is an independent expenditure-only political committee registered with the Commission, and Michael Adams is its treasurer.¹ RGA PAC aired two television

¹ Amended Statement of Organization, RGA PAC (June 8, 2012), <http://docquery.fec.gov/pdf/939/12971260939/12971260939.pdf>.

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4 candidate no refer to a federal election.⁴

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7 written disclaimer stating that RGA PAC is responsible for the content of the advertisement
8 ("content responsibility statement"). The "Twins" advertisement contains a written disclaimer
9 stating: "Paid for by RGA Right Direction PAC, 202-662-4162 and not authorized by any
10 federal candidate or candidate's committee," while the "Facts" advertisement contains a similar
11 written disclaimer stating: "Paid for by RGA Right Direction PAC, 202-662-4162 and not
12 authorized by any candidate or candidate's committee."⁶ The Complaint alleges that the
13 advertisements violated the disclaimer requirements by not including a written content
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² Compl. at 2 (July 1, 2016); <https://www.youtube.com/watch?v=fPRim6SRNrM&feature=youtu.be>;
https://www.youtube.com/watch?v=G0Tp_kM_3xI&feature=youtu.be.

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http://ecmsuite.fec.gov/ecmprd/llisapi.dll/fetch/2000/23676/367992/367912/3788364/3788365/MUR_7095_Contract_873774.pdf?nodeid=4082238&vernum=-2.

⁶ Compl. at 2.

⁷ *Id.* at 2-3.

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15 advertisement must also include both audio and clearly readable written statements that the
16 political committee "is responsible for the content of this advertising."¹¹

⁸ Committee Resp. at 2-3.

⁹ 52 U.S.C. § 30120(a); 11 C.F.R. §§ 110.11(a)(1), 100.26 (defining public communication).

¹⁰ 52 U.S.C. § 30120(a)(3); 11 C.F.R. 110.11(a)(3).

¹¹ 52 U.S.C. § 30120(d)(2); 11 C.F.R. 110.11(c)(4).

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1 The record shows that the two television advertisements failed to include the written
2 "content responsibility statement."¹² Notwithstanding this deficiency, the Commission has not
3 pursued disclaimer violations in past matters where the disclaimer was incomplete but contained
4 sufficient information to indicate that the sponsor had authorized the communication.¹³ The
5 television advertisements in question provided such identifying information. Thus, the
6 Commission dismisses as a matter of prosecutorial discretion the allegation that the Committee
7 violated 52 U.S.C. § 30120(a) and (d)(2) and 11 C.F.R. § 110.11(a)(1) and (c)(4)¹⁴ but cautions
8 the Committee against additional violations of the Act's disclaimer requirements.¹⁵
9

¹² The Committee argues that the disclaimer requirements are inapplicable to the two nonfederal advertisements and claims that it "made an anonymous call to the FEC's Information Division on July 14, 2016, at 10:47 am on the question at issue in this matter and was told without hesitation that the Commission's disclaimer requirements do not apply to advertisements by political committees that mention only candidates for state office." Committee Resp. at 1, 2-3. The Committee's counsel does not indicate who he purportedly spoke to in the Information Division, and the Information Division does not maintain records as to such calls.

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¹³ See MUR 6785 (Kwasman for Congress) (dismissing allegation because campaign materials at issue contained partial disclaimer identifying the payor); MUR 6278 (Committee to Elect Joyce B. Segers for Congress) (dismissing allegations that campaign websites and flyers lacked requisite disclaimers where partial payor information in the form of contact information was included).

¹⁴ *Heckler v. Chaney*, 470 U.S. 821 (1985).

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